

STATE OF TENNESSEE

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Reply to:

Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

March 26, 2003

Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**RE: In Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit it to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful in Furnishing Water Service to Its Customers
Docket No. 03-00118**

Dear Chairman Kyle:

Enclosed is an addendum page that was inadvertently omitted in the original filing of the Response to the Tennessee Regulatory Authority's Request Concerning the Audit Authority of the Consumer Advocate & Protection Division of the Office of the Attorney General. There are 13 copies provided for filing. In addition, copies are being sent to all parties of record. If you have any questions, kindly contact me at (615) 532-3382. Thank you.

Sincerely,

Shilina B. Chatterjee
Assistant Attorney General

Enclosures

cc: All Interested Parties

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information from the utility. The petition shall state with particularity the information sought and the type of proceeding that may be initiated if the information is obtained. Additionally, the consumer advocate division may request information from the commission staff, and if commission staff is in possession of the requested information, such information shall be provided within ten (10) days of the request.

An examination of this subsection reveals that the Consumer Advocate's power to obtain information is strictly constrained; the Advocate must state with particularity the information sought, and may only request information for the purpose of initiating a proceeding or intervening into a proceeding in furtherance of its representational role. T.C.A. § 65-4-118(c)(2)(A)&(B). The Consumer Advocate Division, as a part of the Commission, possesses only those powers granted to it by the legislature, see **Pharr v. Nashville, Cincinnati & St. Louis Railway**, 186 Tenn. 154, 208 S.W.2d 1013 (Tenn. 1948), and the grant of those powers in T.C.A. § 65-4-118(c)(2)(B) constitutes a specific legislative determination as to how the Advocate will gather the information essential to competent performance of his duties. Accordingly, any consideration of audits or other alternative means of acquiring information is foreclosed under the maxim, "expressio unius est exclusio alterius" (the express mention of a subject or subjects in a statute necessarily means the exclusion of all subjects not mentioned). See **State v. Harkins**, 811 S.W.2d 79 (Tenn. 1991). The Advocate is simply not empowered to acquire information by audit or by any other method not specified by the General Assembly. **Tennessee Public Service Commission v. Southern Railway Co.**, 554 S.W.2d 612, 613 (Tenn. 1977) (any authority exercised by Commission must be the result of an express grant of authority by statute or arise by necessary implication from expressed statutory grant of power).

It is the opinion of this Office that an audit of a public utility is a regulatory function not within the duties or authority of the Consumer Advocate. The Consumer Advocate's independent power to gather information concerning public utilities is granted in furtherance of the Consumer Advocate's representational role only, and T.C.A. § 65-4-118(c)(2)(B) does not constitute a legislative sanction for the Advocate to perform audits or other regulatory functions.

Requested by: The Honorable Steve Hewlett, Public Service Commissioner, 460 James Robertson Parkway, Nashville, Tennessee 37243-0505

CHARLES W. BURSON, Attorney General and Reporter (MICHAEL E. MOORE, Solicitor General; STEVEN M. RODERICK, Assistant Attorney General)